

ORDINANCE NO. 2005-20

AN ORDINANCE AMENDING DIVISIONS 1, 2, AND 3, ARTICLE VI, CHAPTER 14 OF THE CODE OF THE CITY OF FAIRFAX, VIRGINIA, PERTAINING TO MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS.

BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 14, Article VI, Divisions 1, 2, and 3 of the Code of the City of Fairfax, Virginia, are hereby amended and shall read in its entirety as follows:

**ARTICLE VI. MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS
DIVISION 1. GENERALLY**

Sec. 14-291. Declaration of policy.

It shall be the public policy of the city and the city council hereby declares, that the licensing of massage establishments and massage therapists is required to protect the public health, safety and general welfare, and the city council hereby exercises its regulatory authority under the police power.

Sec. 14-292. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief of police means the chief of police of the City of Fairfax, Virginia, or his designee.

City manager means the city manager of the City of Fairfax, Virginia, or his designee.

Client means any person receiving a massage from a massage therapist who has been compensated for administering the massage.

Director of health means the Fairfax County Director of Health, or his designee.

Disqualifying offenses means offenses which disqualify an applicant from obtaining a permit pursuant to this article or, if the offender already holds a permit, which mandate revocation of the permit. Disqualifying offenses are the following:

(1) Conviction, plea of nolo contendere, or a forfeiture on a charge of violating any provision of Code of Virginia, §§ 18.2-346, 18.2-347 through 18.2-349, 18.2-355 through 18.2-358, 18.2-361, 18.2-368, 18.2-370, 18.2-370.1, 18.2-371, 18.2-386.1 or 18.2-387, which laws relate to sexual offenses, or any provision of an ordinance of the city or a law or ordinance of any other jurisdiction which prohibits the same conduct, within the past ten years.

(2) Conviction, plea of nolo contendere, or a forfeiture on a charge of violating any provision of this article, or on a charge of violating a similar law in any other jurisdiction, within the past ten years.

(3) Making a false statement on a permit application.

Erogenous area means the genitals and the nipples and areolae.

Massage means the treatment, for compensation, of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body, unless the massage is excluded from regulation in this article.

Massage establishment means any fixed place of business where massages are administered to a client, unless the place is excluded from regulation in this article.

Massage therapist means any person certified as a massage therapist by the board of nursing of the Commonwealth of Virginia.

Off-premises massage means any massage administered for compensation at a location other than at a massage establishment.

Person means any individual, firm, partnership, corporation, company, association or joint stock association.

Sec. 14-293. Exclusions.

The provisions of this article shall not apply to the following massages, and such massages are expressly excluded from the requirements of this article:

- (1) A massage administered only to the scalp, face, neck, shoulders, arms, hands, and/or the feet.
- (2) A massage administered in a hospital or medical clinic, or by a physician, chiropractor, osteopath or physical therapist licensed by the commonwealth, in any location, while such professional is engaged in the personal performance of the duties of his profession.
- (3) A massage administered in a nursing home, convalescent care facility, assisted living facility, progressive care facility or life care facility.
- (4) A massage administered at an organized public event, such as a health fair or sporting event, which is open for participation or viewing by the general public.
- (5) A massage administered at a school which offers a massage therapy program that has received programmatic approval from the state board of education, office of proprietary schools, or that has been certified or approved by the state board of education, office of proprietary schools or the state council of higher education; provided, however, that this exclusion applies only if the person administering the massage is a student enrolled at the school and receives no compensation for administering the massage.

Sec. 14-294. Enforcement of article.

- (a) *Penalty.* The penalty provisions of section 1-11 of this Code shall be applicable to this article.
- (b) *Violation.* It shall be unlawful for any person to violate any provision or provisions of this article. Any person violating any provision or provisions of this article shall be guilty of a class 1 misdemeanor.
- (c) *Right of entry to enforce article.* The city manager, director of health, department of fire and rescue services, police department and zoning administrator and building official, or their duly authorized agents, are hereby authorized to enter, examine and survey, during business hours, any premises in the city for which a massage establishment permit has been issued pursuant to this article for the purposes of inspection and to enforce the provisions of this article. The director of health shall inspect each massage establishment at least one time per year to determine whether it is being operated in compliance with this article. This section shall not restrict or limit the right of entry vested in any law enforcement agency.
- (d) *Revocation of permits.* Notwithstanding the other provisions of this article, any massage establishment permit or massage therapist permit granted under this article may be revoked by the chief of police after notice and hearing, as provided in this article, if the permittee (individually, or if the permittee is a partnership or association, any partner or member thereof, or if the permittee is a corporation, any officer, director, or shareholder owning ten percent or more of its capital stock), has

committed any disqualifying offense or repeatedly has had a permit issued under this article suspended.

(e) *Grounds for revocation.* If the chief of police believes that grounds for revocation of a permit exist, the chief of police shall give the permittee written notice enumerating the grounds and declaring his intent to hold a hearing before the chief of police for revocation of the permit, as well as indicating the time and place of hearing. Such notice shall be mailed, by certified mail, to the permittee's last known address at least ten days prior to the time set for hearing. At the hearing, the permittee may be represented by counsel, may cross examine witnesses and may present evidence in his favor. If the chief of police finds that any ground for revocation in fact exists, the chief of police shall revoke the permit. The chief of police shall issue a written notice of his findings and decision within ten work days of the hearing.

(f) *Suspension of permits.* Grounds for suspension for any permit granted under this article exist if the permittee has failed to comply with any provisions of this article other than those which mandate revocation. If the chief of police finds that the massage establishment for which the massage establishment permit was issued does not conform to the standards set forth in this article, or that the permittee has refused the chief of police or other authorized person the right to enter the premises to enforce the provisions of this article, as provided in this section, the chief of police may enter an order for the immediate suspension of the permit, with or without notice, until such time as he finds that the reason for such suspension no longer exists. The chief of police may end a suspension at any time if he is satisfied that the reason for the suspension has been corrected. A copy of any suspension order shall be hand-delivered or sent to the permittee at his place of business by certified mail, which order shall set forth the reasons for such suspension. The permittee shall be afforded an opportunity to be heard by the chief of police within 30 days after the order of suspension of the permit. Any massage establishment permit granted under this article shall be suspended by the chief of police for six months if more than two convictions of any violation of any provision of this article shall have occurred on the premises of the massage establishment within one 12-month period. The permittee shall receive notice of such suspension and shall be entitled to a hearing before the chief of police, as provided in this subsection. The notice shall be given in writing, shall set forth the grounds for the suspension, and shall state the time and place of the hearing. Such notice shall be mailed by certified mail to the permittee's last-known address at least ten days prior to the time set for the hearing.

Secs. 14-295--14-320. Reserved.

DIVISION 2. MASSAGE ESTABLISHMENT PERMITS

Sec. 14-321. Required; term; fee.

(a) No person shall engage in, conduct, or carry on a massage establishment within the city without a valid, nonsuspended permit issued pursuant to this division.

(b) A massage establishment permit shall be valid for two years from the date of issuance, unless sooner suspended or revoked. Within 60 days before the expiration date, a permitted massage establishment may apply for a new permit.

(c) Each application for a massage establishment permit shall be accompanied by an application fee of \$150.00, no part of which shall be refundable. Such fee shall be in addition to any business license tax required to be paid under this Code, or any other taxes or fees which may be required to engage in the business, or any investigation fees as provided in this article.

Sec. 14-322. Application; forms.

Each application for a massage establishment permit shall be on a form provided by the chief of police and shall be submitted to the chief of police. The applicant shall provide full answers to all questions on the application under oath. Each such form shall contain the

following information, as well as any other information which the chief of police deems necessary to properly evaluate the application:

- (1) A description of the facilities and services to be available on the premises of the proposed massage establishment, and the name under which the proposed massage establishment will operate.
- (2) The location and mailing address of the proposed massage establishment.
- (3) The name and residence address of each applicant, and any names under which the applicant previously was known. If the applicant is an association or a partnership, the names and residence addresses of each of the associates or partners. If the applicant is a corporation, the names and residence addresses of each of the officers and directors of the corporation and of each stockholder owning more than ten percent of the stock of the corporation.
- (4) If the applicant is an individual, all other residences of the applicant for the three-year period immediately prior to the application. If the applicant is an association or partnership, the names and residence of each associate partner for the three-year period immediately prior to the application. If the applicant is a corporation, all of the residences for a three-year period of each of the officers and directors of such corporation.
- (5) If the applicant is an individual, written proof that the applicant is 18 years of age or older. If the applicant is a partnership, written proof that each partner is 18 years of age or older. If the applicant is a corporation, written proof that each of the officers and directors of such corporation is 18 years of age or older.
- (6) A complete set of fingerprints and photographs of the applicant, of a size and form designated by the chief of police, or of each partner, if the applicant is a partnership, or of each officer and director of the corporation, if the applicant is a corporation. The fingerprints shall be taken by the chief of police. If the application is a renewal for a currently valid massage establishment permit, no fingerprints will be required for anyone whose prints were taken with the original application, if the massage establishment permit being renewed has remained valid.
- (7) If the applicant is an individual, the business, occupation, or employment of the applicant for the three-year period immediately preceding the date of the application. If the applicant is a partnership or corporation, the business occupation or employment of each partner, officer or director for the three-year period immediately prior to the date of the application.
- (8) Whether the applicant, either individually or as part of a partnership or corporation, currently holds or previously held a permit or license to operate a massage establishment or to administer massages anywhere in the commonwealth or any other state or locality. If the answer is affirmative, the license or permit number, the identity of the issuing authority and whether such permit or license has ever been revoked or suspended and the reason therefor. The history of the applicant, whether individually or as part of a partnership or corporation, in the operation of massage establishments or similar business or occupation, including, but not limited to, whether or not such applicant, in previously operating in this or another city or state under permit, has had such permit revoked or suspended and the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.
- (9) The criminal record, if any, other than misdemeanor traffic violations, of the applicant, or of any associate or partner of the association or partnership, if the applicant is an association or partnership, or of any officer or director of the corporation, if the applicant is a corporation. If requested by the chief of police, the applicant, any associate or partner of the association or partnership if the applicant is an association or partnership, and any officer or director of the corporation, if the applicant is a corporation, shall submit a consent form allowing the chief of police to obtain a search of the central criminal records exchange (CCRE) by mail. Any fees

incurred by the city in obtaining the applicant's CCRE information, including that of any associate, partner, officer or director required under this article to submit information, shall be reimbursed by the applicant to the city prior to the issuance of a massage establishment permit. The chief of police shall have a check of the CCRE performed on the applicant, any associate or partner of the association or partnership, if the applicant is an association or partnership, and any officer or director of the corporation, if the applicant is a corporation required under this article to submit information. This check of the CCRE shall be performed prior to the issuance of a massage establishment permit and the CCRE check may be performed by computer or by mail.

(10) The name of the operator or manager of the massage establishment. If the owner or manager of the massage establishment is not an applicant, then the operator or manager must provide the information required in this section relative to the applicant.

Secs. 14-323--14-350. Reserved.

DIVISION 3. MASSAGE THERAPIST PERMIT

Sec. 14-351. Required; term; fee.

- (a) No person shall administer a massage in a massage establishment or at any other location within the city without a valid, nonsuspended permit issued pursuant to this division.
- (b) It shall be unlawful for the owner, operator or manager of any massage establishment to allow any person who does not have the massage therapist permit required by this division to administer any massage in the massage establishment.
- (c) The chief of police shall not issue a massage therapist permit to any person who is not certified by the board of nursing of the commonwealth as a massage therapist.
- (d) A massage therapist permit shall be valid for two years from the date of issuance, unless sooner suspended or revoked. Within 60 days before the expiration date of the permit, a permitted massage therapist may apply for a new permit.
- (e) Every person applying for a massage therapist permit shall pay an application fee of \$100.00. Such fee shall be in addition to any business license tax or any other tax or imposition required to be paid pursuant to this Code or any investigative fee imposed in this article.

Sec. 14-352. Application; forms; certification.

- (a) Each application for a massage therapist permit shall be upon a form provided by the chief of police and shall be submitted to the chief of police. The applicant shall provide full answers to all questions on the application under oath. Each such form shall contain the following information, as well as any other information which the chief of police deems necessary to properly evaluate the application:
 - (1) The applicant's full name, date of birth, residential and business addresses and telephone numbers, and any names by which the applicant was previously known.
 - (2) A copy of the applicant's massage therapist certification from the board of nursing of the commonwealth.
 - (3) The applicant's personal characteristics, such as height, weight, eye color, hair color, sex and race.

(4) The names and addresses of any and all previous massage establishments where the applicant has been employed as a massage therapist within the past three years.

(5) A sworn statement regarding the criminal record, if any, other than misdemeanor traffic violations, of the applicant.

(6) Whether the applicant currently holds or previously held a permit or license to offer or administer massages anywhere in the state or in any other locality. If the applicant holds or has previously held any such permit or license, the applicant shall provide the license or permit number and whether any license or permit has been revoked and if so, the circumstances of such revocation.

(7) A complete set of the applicant's fingerprints, which shall be taken by the chief of police, and photographs of the applicant, of a size and form designated by the chief of police. If requested by the chief of police, the applicant shall sign a consent form allowing the chief of police to obtain a search of the central criminal records exchange (CCRE) by mail. Any fees incurred by the city in obtaining the applicant's CCRE information shall be reimbursed by the applicant to the city prior to the issuance of a massage therapist permit. The chief of police shall have a check of the CCRE performed on the applicant required under this article to submit information. This check of the CCRE shall be performed prior to the issuance of a massage therapist permit and the CCRE check may be performed by computer or by mail. If the application is a renewal for a currently valid massage therapist permit, no fingerprints will be required for anyone whose prints were taken with the original application, if the massage therapist permit being renewed has remained valid.

(b) Each holder of a massage therapist permit shall report to the chief of police any change in any of the information required in subsection (a) of this section, such report to be made within 14 days of learning of the change. Failure to report a change after learning of it shall be grounds for revocation of the permit.

(c) The validity of a massage therapist permit issued under this division is dependent on the validity of the state certification as a massage therapist. Suspension of a massage therapist's certification by the commonwealth shall result in the automatic suspension of the permit issued under this division. Revocation of a massage therapist's certification by the commonwealth shall result in the automatic revocation of the permit issued under this division. Automatic suspensions and revocations are not subject to the notice and hearing requirements contained in this article.

Sec. 14-353. Issuance or denial of massage establishment or massage therapist permits.

(a) The chief of police shall act on a massage establishment permit application within 60 days from the date he receives the application. The chief of police shall act on a massage therapist permit application within 21 days from the date he receives the application.

(b) If the chief of police determines from the information contained in the permit application and from his investigation that the applicant has committed no disqualifying offenses and that the applicant is otherwise qualified under this article to offer or to administer massages in the city, the chief of police shall issue the requested permit. Each permit issued by the chief of police shall be property of the city and shall be returned to the chief of police if the permit is suspended or revoked as provided in this article.

(c) If the chief of police determines from the information contained in the permit application and from the chief of police's investigation that the applicant has committed one or more disqualifying offenses or is otherwise not qualified under this

article to offer or to administer massages in the city, the chief of police shall deny the application.

(d) If the chief of police denies the application, he shall provide the applicant with written notice setting forth the grounds for the denial.

Sec. 14-354. Display of permits.

Every person to whom a massage establishment permit is issued shall display the permit in a conspicuous place in the massage establishment, so that it may readily be seen by persons entering the massage establishment. Every person to whom a massage therapist permit has been granted shall display the permit while in a massage establishment.

Sec. 14-355. Transfer of permits.

No permit issued under this article shall be transferable from one person to another, whether by sale, lease, merger or otherwise. If a privately held corporation, partnership or corporation holds a massage establishment permit issued under this article, the transfer of more than ten percent of the ownership of the corporation, company or partnership to a person or entity who was not an owner when the application was made shall cause the automatic expiration of the permit. The expiration shall occur on the date of the transfer. A change of location of a massage establishment may be approved by the city manager and the massage establishment's permit transferred to the new location, provided the massage establishment continues to comply with all applicable provisions of this Code.

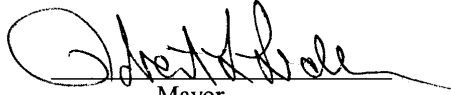
Secs. 14-356--14-380. Reserved.

This ordinance shall become effective upon adoption as provided by law.

INTRODUCED: October 25, 2005

PUBLIC HEARING: November 29, 2005

ENACTED: November 29, 2005


Mayor
December 6, 2005
Date

ATTEST:


City Clerk

	<u>Vote</u>
Councilwoman Cross	Aye
Councilman Greenfield	Aye
Councilwoman Lyon	Aye
Councilman Rasmussen	Aye
Councilman Silverthorne	Aye
Councilmember Winter	Aye